

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DIAGEO NORTH AMERICA, INC.,

Plaintiff,

-against-

M/V "CALIFORNIA LUNA", her engines, boilers, etc.
and ORIENT OVERSEAS CONTAINER LINES LIMITED,

Defendant.

08 CV 2522 (LTS)(GWG)

**PRELIMINARY
PRE-TRIAL
STATEMENT**

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In accordance with the Court's Initial Conference Order the parties respond to Paragraph 4 as follows:

- a. This is an action for alleged damage and loss to 865 of 1,060 cases of Bushmills whisky shipped in a 40' ocean container which was delivered to the defendant already loaded and sealed for carriage from Belfast to North Bergen, New Jersey under a through ocean bill of lading issued by defendant, Orient Overseas Container Line Limit ("OOCL"). Plaintiff, Diageo North America, Inc. ("Diageo") claims damages in the amount of \$92,595.60.
- b. This is an admiralty or maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and within the admiralty and maritime jurisdiction of the United States and of this Court.
- c. None, at present.
- d. None, at present.

- e. Whether the plaintiff can establish a prima facie case against the defendant and whether any of the defenses outlined in the United States Carriage of Goods by Sea Act or the contract of carriage limit or exonerate the defendant's possible liability.
- f. Whether plaintiff has proved a prima facie case of damage and loss to the cargo and the amount of damages.

The defendant questions the condition of the cargo at the time it was delivered to the defendant, and further questions the condition of the cargo upon delivery by OOCL. Moreover, OOCL questions whether the plaintiff has mitigated its damages.

- g. This action is governed by the United States Carriage of Goods by Sea Act, 46 U.S.C. 1300, et. seq.
- h. OOCL's defenses are based upon the United States Carriage of Goods by Sea as well as by the terms of its contract of carriage with Plaintiff.
- i. Plaintiff will prove that the cargo was delivered to defendant in good order and condition at origin but redelivered by OOCL at destination in a damaged conditions. Plaintiff also bears the burden of proof on the issues of the damages it allegedly sustained and whether proper efforts were made to mitigate the damages.
- j. None anticipated at the present time.
- k. The parties do not agree to consent to the transfer the case for all purposes, including trial, to a magistrate judge.
- l. Rule 26(a)(1) disclosures should be made by June 27, 2008. No other changes are required.

- m. The condition of the cargo at origin and destination, the nature and extent of the plaintiff's damages and plaintiff's mitigation efforts, and OOCL's handling of the cargo.
The parties expect to complete discovery by November 30, 2008.
- n. At this time it is not known if expert testimony will be needed. Nonetheless, if such testimony is needed, the parties expect it to be concluded by November 30, 2008.
- o. None.
- p. Settlement discussions have not been fruitful to date but will continue. The parties see no need for court ordered mediation at this time as there is no impediment to our ability to converse about settlement, but further discovery is required to do so meaningfully.
- q. Non jury trial expected to last 2 – 3 days.
- r. None.

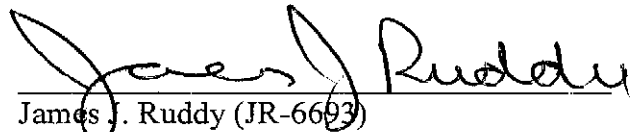
Dated: New York, New York

June 10, 2008

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McDERMOTT & RADZIK, LLP.
Attorneys for Plaintiff

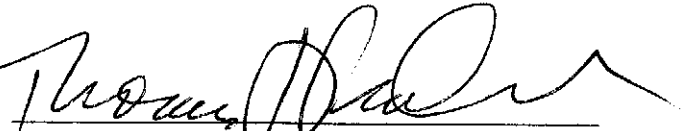
By:



James J. Ruddy (JR-6693)
Wall Street Plaza
88 Pine Street 21st Floor
New York, New York 10005
212-376-6400
File No.: 10-07-1992 JJR

TISDALE LAW OFFICES, LLC
Attorneys for Defendant

By:

A handwritten signature in black ink, appearing to read 'Thomas L. Tisdale', is written over a horizontal line.

Thomas L. Tisdale (TY-5263)

Lauren C. Davies (LF-1980)

11 West 42nd Street Suite 900

New York, New York 10036

212-354-0025